THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CRIMINAL CASE NO. 1:07-cr-00032-MR-1

UNITED STATES OF AMERICA,	)	
	)	
	)	
vs.	)	**O R D E R**
	)	
	)	
RODNEY LAMONT ALLEN.	)	
_____	)	

THIS MATTER is before the Court on the Defendant's "Motion 60(b)(4)" [Doc. 266].

On June 9, 2007, the Defendant pled guilty to the charge of conspiracy to possess with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 846 and 841(a). [Doc. 1]. On January 28, 2008, the Defendant was sentenced to 188 months' imprisonment. [Doc. 120]. The Defendant did not appeal his sentence or conviction.
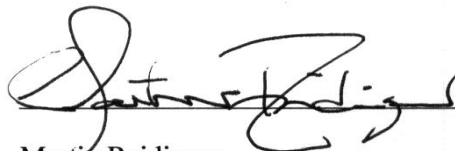
On April 8, 2013, the Defendant filed the present motion pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, seeking relief from the Judgment entered in this case on the grounds that the Court erred in applying a four-level enhancement for the Defendant's leadership role in the conspiracy. [Doc. 266].

A defendant may not use the Federal Rules of Civil Procedure to challenge his criminal judgment. United States v. Grapes, No. 10-7612, 2011 WL 195672, at *1 (4th Cir. Jan. 21, 2011) ("The Federal Rules of Civil Procedure do not provide a vehicle by which [Defendant] may challenge his criminal judgment.") (per curiam), cert. denied, 132 S.Ct. 1946, 182 L.Ed.2d 801 (2012); United States v. Leake, 96 F. App'x 873, 873 (4th Cir. 2004) ("[Defendant] cannot challenge an order in his criminal case using the Federal Rules of Civil Procedure....") (per curiam). Further, Rule 60(b) cannot be used as a substitute for a motion seeking collateral review of a criminal judgment. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Even if the Court could consider the Defendant's Motion, it would be untimely as it was filed more than five years after the expiration of the time for filing a notice of direct appeal. See United States v. McKelver, 225 F. App'x 185, 186 (4th Cir. 2007) (per curiam).

IT IS, THEREFORE, ORDERED that the Defendant's Motion [Doc. 266] is **DENIED**.

Signed: April 25, 2013

IT IS SO ORDERED.

Martin Reidinger
United States District Judge